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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ALAN DALE COVINGTON,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">MOTION <i>IN LIMINE</i> TO EXCLUDE IRRELEVANT AND PREJUDICIAL EVIDENCE RECOVERED DURING ARREST</p> <p style="text-align: center;">Case No. 2:19-cr-00057 HCN</p>
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Alan Covington, through undersigned counsel, respectfully moves this Honorable Court *in limine* to exclude all evidence of items recovered from Mr. Covington's person after his arrest on November 27, 2018, including a brown-handled hatchet, pills, lighter, tin foil, suspected heroin, a pen pipe, a laser pointer, and gloves.¹ These items are irrelevant to the core issues at trial, highly and unfairly prejudicial to Mr. Covington, and constitute impermissible propensity evidence. The Court should exclude all evidence of these items under Federal Rules of Evidence 402, 403, 404, and the Fifth and Sixth Amendments to the United States Constitution.

¹ The defense understands that the Government may seek to introduce the square pipe that Mr. Covington was carrying when he was seized. The defense does not include that square pipe in this motion *in limine*.

Mr. Covington requests an opportunity to be heard on this Motion. In support of this Motion, counsel states:

- 1) On February 20, 2019, the federal government indicted Alan Covington on three counts of committing a hate crime in violation of 18 U.S.C. § 249(a)(2). The allegations arose from an alleged incident on November 27, 2018, in Salt Lake City, Utah.
- 2) On the morning of November 27, 2018, police stopped Mr. Covington as he was walking a few blocks from Lopez Tires holding a square pipe. Police placed Mr. Covington in handcuffs and under arrest.
- 3) Police searched Mr. Covington and recovered a number of items, including a brown-handled hatchet, pills, lighter, tin foil, suspected heroin, a pen pipe, a laser pointer, and gloves.
- 4) On June 24, 2019, the defense filed a request for notice of the Government's intent to introduce any 404(b) or 609(a) evidence (Dkt. 28). As of the date of this filing, the Government has not responded to that request.

ARGUMENT

A basic principle of the rules of evidence is that only relevant evidence is generally admissible and irrelevant evidence is inadmissible. *See* Fed. R. Evid. 402. The items recovered from Mr. Covington after his arrest have no probative value in this case because they do not make the existence of a disputed fact any more or less probable.

However, these items are plainly evidence of past crimes and bad acts that directly bear on Mr. Covington's character. Both alone and in concert, these items suggest or directly show evidence of other violence, drug use, or general nefarious activity – all highly prejudicial, inflammatory, and completely unrelated to this case. Mr. Covington notes that the Government

has never provided notice of an intent to introduce prior bad act evidence, despite a defense request for such notice. But even if the Government had provided such notice, evidence of uncharged misconduct cannot be elicited simply to denigrate a defendant's integrity. Here, the Government cannot show any legitimate use for these items; the Government could only offer the evidence to attack Mr. Covington's character, imply that he is predisposed to commit crimes, and violate Mr. Covington's constitutional right to a fair trial by unfairly prejudicing the jurors against him. The Court should exclude any evidence of these items from Mr. Covington's arrest.

WHEREFORE, for the foregoing reasons, and for such other reasons as may appear at a hearing on this Motion, Mr. Covington requests that this Court exclude all evidence of the items seized from Mr. Covington at the time of his arrest.

DATED this 11th day of July, 2019.

/s/ Emily Stirba
EMILY STIRBA
Assistant Federal Defender